

Yambot (Migration) [2019] AATA 6080 (21 October 2019)

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- 2.

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANT:	Mrs Maribel Yambot
CASE NUMBER:	1801030
DIBP REFERENCE(S):	BCC2015/2280102
MEMBER:	Hugh Sanderson
DATE:	21 October 2019
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Statement made on 21 October 2019 at 2:06pm

CATCHWORDS

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Spouse) – Federal Circuit Court remittal – false or misleading information – failed to declare marriage – claimed mistaken identity – lack of evidence marriage terminated – current marriage certificate bogus document – genuine and continuing relationship – no compassionate or compelling circumstance – decision under review affirmed

LEGISLATION

*Migration Act 1958 (Cth), ss 5, 65
Migration Regulations 1994 (Cth), r 1.15A, Schedule 2, cls 820.211, 820.221, 820.226,
Schedule 4, Public Interest Criterion 4020*

CASES

*Arora v MIBP [2016] FCAFC 35
Batra v MIAC [2013] FCA 274
Kaur v MIBP [2017] FCAFC 184
Plaintiff M64/2015 v MIBP [2015] HCA 50
Trivedi v MIBP [2014] FCAFC 42*

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

3. This is an application for review of a decision made by a delegate of the Minister for Immigration on 19 September 2016 to refuse to grant the applicant a Partner (Temporary) (Class UK) visa under s.65 of the *Migration Act 1958* (the Act).
4. The applicant applied for the visa on 8 August 2015. The delegate refused to grant the visa on the basis that the applicant did not satisfy the requirements of cl.820.226 of Schedule 2 to the Migration Regulations 1994 (the Regulations) because the applicant had provided information that was false or misleading in a material particular and did not meet Public Interest Criterion 4020 (PIC 4020) of Schedule 4 to the Regulations.

Background

5. The applicant is a citizen of the Philippines and is currently 41 years old. In her application, she claimed that her mother, three sisters and a brother continue to reside in the Philippines. She said that she had not previously been married. The sponsor of the applicant is Colin Warild. He was born in Australia and is an Australian citizen. He is currently 57 years old. He claimed not have been in a previous relationship.
6. The parties claim they first met each other on 20 February 2005 on an internet chat room. They claim to have kept in regular touch with each other and their relationship developed. The sponsor travelled to the Philippines on 29 April 2007 and the parties met in person for the first time. The sponsor asked the applicant to marry him on 15 May 2007 and she agreed.
7. Since they were engaged, the sponsor has travelled overseas as follows:
 - From 3 May 2008 to 25 May 2008;
 - From 2 May 2009 to 24 May 2009;
 - From 14 November 2009 to 22 November 2009;
 - From 6 June 2010 to 28 June 2010;
 - From 4 July 2011 to 26 July 2011; and
 - From 4 May 2013 to 2 June 2013;
8. The applicant has travelled to Australia over the following periods on Visitor visas:
 - From 7 June 2014 to 17 June 2014;
 - From 9 November 2014 to 7 February 2015; and
 - From 1 August 2015.
9. The parties were married on 10 January 2015 in Sydney. A copy of their marriage certificate has been provided to the Department. In that certificate, both parties' conjugal status is recorded as having been never validly married. The applicant returned to the Philippines after the marriage due to work commitments there. After returning to Australia on 1 August 2015 the current application was filed.
10. The Department contacted the Office of the Civil Registrar General of the Philippine Statistics Authority requesting a check on the applicant. The office provided the Department with a copy of the applicant's birth certificate together with a certificate of marriage.

11. The certificate of marriage noted the applicant had married Virgillo D Urbano Jr. on 15 July 2005. The applicant was identified in that marriage certificate by her date of birth and the identification of her parents which was the same as on her birth certificate.
12. The Department wrote to the applicant on 21 April 2016 with this information noting that based on the marriage certificate from the Philippine authorities, she had provided, or caused to be provided, a bogus document or false or misleading information in relation to the visa application. She was invited to comment upon this information and provide any compelling circumstances that would justify the granting of the visa.
13. The applicant responded on 8 August 2016 stating that she had never been married before and did not have a child in the Philippines. She claimed that she believed that it was a case of mistaken identity. She claimed that she was married to the sponsor and that it would be devastating for him and his life would be miserable if something happened to their marriage.
14. The delegate who considered the application found the applicant had been previously married in the Philippines. The delegate did not accept that it could be a case of mistaken identity where the person was identified with the same date of birth and in the same town as the applicant. Accordingly, the delegate found the applicant did not meet PIC 4020(1). The delegate was not satisfied that any claims had been made of compelling circumstances that would justify the granting of the visa and therefore did not waive the requirement pursuant to PIC 4020(4).
15. As the delegate found the applicant did not meet PIC 4020, the delegate found the applicant did not meet the criteria in cl.820.226 and refused the application.

Information to the Tribunal

16. The applicant applied for a review of the decision before the Tribunal (differently constituted). Further documents were provided in support of the application including documents to show the parties were living together and a letter from the sponsor claiming he would be devastated if the applicant was refused the application. The applicant provided documents showing that she had purchased a property in the Philippines in 2012 and declared her marital status at that time as single. A hearing was conducted where the applicant, the sponsor and the sponsor's sister, Abigail Medrand, gave evidence.
17. The Tribunal affirmed the Department's decision. An appeal against that decision was remitted by consent on the basis the Tribunal had failed to take into account the likely impact of the refusal to waive PIC 4020 upon the Australian citizen sponsor.
18. The applicant provided a statutory declaration dated 10 October 2019 stating that she was telling the truth and that information in the marriage certificate from the Philippines was a case of mistaken identity.
19. The applicant's sponsor provided a statement where he said as follows:
 20. I believe if my wife is ordered to leave Australia it would cause me to back into deep depression as I suffered before meeting my wife.
 21. It would also lead to self-destructive behaviour and suicidal thoughts as I had before, a position I do not wish to return too. (sic)
22. The applicant appeared before the Tribunal on 17 October 2019 to give evidence and present arguments. The Tribunal also received oral evidence from the applicant's sponsor.

The applicant was represented in relation to the review by her registered migration agent who attended the hearing.

23. The Tribunal explained to the applicant the basis for the Department's decision based on the finding that the applicant had provided false and misleading information by failing to declare her marriage to Virgillo Urbano Jr. as disclosed in the records held by the Philippine authorities. The Tribunal noted that as the applicant had provided her marriage certificate to her sponsor, this would be considered a bogus document if the Tribunal concluded that she had been previously married in the Philippines and that marriage was still valid. The marriage certificate to her sponsor would then have been obtained because of a false and misleading statement because she claimed that she had not been previously married.
24. The applicant said that she had been living with her husband in the same place for about four years. She had been working for the last three years as an office administrator earning about \$55,000 per annum. She said that her husband had been working as an interstate truck driver with the same company for about 15 years. She believed his income was about \$100,000 per annum.
25. The applicant's sister and niece currently reside in Australia. They hold temporary Student visas.
26. The sponsor has three brothers who reside in Australia but he does not have much contact with them. He has few close friends in Australia and apart from her friends, and socialises only with his workmates. His work requires him to drive from Sydney to Brisbane and return each two days. Over a 14 day week he has two weekends which vary according to his work schedule. He has been diagnosed as being a diabetic and has regular check-ups for this. Apart from these check-ups, he rarely sees a doctor.
27. The applicant said her relationship with her husband, the sponsor, began in 2007. After that time, he would travel to the Philippines each year for about 20 days. She would find a hotel for him to stay in and she would stay with him over the period he was in the Philippines. After she purchased her home in 2012 her husband stayed with her in the home that year. She provided details of how she purchased the property through a government scheme. She has now repaid the debt on that home. The home remains vacant and her mother visits the home occasionally to clean the house.
28. The Tribunal referred to the Certificate of Marriage which showed the applicant had married Virgillo Urbano Jr. She said that she had no idea who Virgillo Urbano Jr. was. She said that she had asked other people, but no one knew who the person was. She said that when she responded to the Department and said that she did not have a child in the Philippines this was because she was shocked by the information and to make it clear that she was not previously married.
29. The Tribunal showed the applicant the Residential Tenancy Agreement entered into by the applicant and her husband on 10 October 2015 that she had provided to the Department. She confirmed that the signature on that document was her signature. The Tribunal showed the applicant the Philippine Certificate of Marriage. She confirmed the signature on the Certificate of Marriage appeared to be the same signature she gave on the Residential Tenancy Agreement.
30. The applicant said that she and her husband are planning to have a holiday together once the visa issues are resolved. They plan to return to the Philippines and also travel to other countries. She said that her husband has 600 hours of holidays owing to him together with long service leave.

31. The sponsor gave evidence in support of the application. He said that he had been working as a truck driver for 26 years and enjoyed the work. He said that he has rarely taken time off work for any reason. He said the last time he took any extended period of time off work was in 2012 when he suffered a ruptured Achilles tendon. He said that he was diagnosed as suffering from diabetes at that time and has been on medication since then. He said that this does not really adversely affect him. He said that he also suffers from sleep apnoea and sees a specialist once a year. He said that he has never seen a psychiatrist or any other specialist.
32. The sponsor said that he does not have much contact with his brothers since the death of their mother in 2016. He said that he does not have many friends in Australia. He provided details of his travel to the Philippines before 2013. He said that he and the applicant plan to travel to the Philippines if the applicant is granted a visa to visit her family there.
33. The sponsor said that he suffered from depression from his mid-20s until 2007 when he started his relationship with the applicant. He said that he has received no treatment for depression or any suicidal ideation at any time. He said that he has never disclosed to anyone else any suicidal thoughts. He said that he never had any treatment for depression or any other issue as he kept it to himself.
34. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

35. In written submissions provided by the agent prior to the hearing, it was argued that 'if this Tribunal is satisfied it fell into jurisdictional error then the appropriate course of action is to remit the matter back to Department of Home Affairs' (sic). The Tribunal raised this submission with the applicant's agent at the hearing. The Tribunal does not accept the submission.
36. The order that was made in the Federal Circuit Court was that the Tribunal was required to reconsider the matter according to law. The fact that the matter was remitted for reconsideration by the Tribunal does not indicate the applicant meets PIC 4020. The obligation on the Tribunal is to reconsider whether the visa applicant meets PIC 4020 in full which it has done. It would be inappropriate for the Tribunal to simply remit the matter to the Department with a finding that the applicant meets PIC 4020 based on a jurisdictional error in the assessment of the application in the original consideration of the application before the Tribunal.
37. During the hearing, the applicant's agent suggested the Tribunal delay the making of any decision until the applicant had an opportunity to return to the Philippines to clarify or rectify any mistake in the records held by the Philippine authorities. The Tribunal does not accept that this is an appropriate course at this time.
38. The Department first notified the applicant on 21 April 2016 that the relevant Philippine authorities had recorded her being married to another person on 15 July 2005. The Department gave the applicant an extension of time to provide a response to this information. The only response provided by the applicant at that time was claiming that she had never been married before and did not have a child in the Philippines. There was no information provided which would indicate the records held by the Philippine authorities have been created in mistake or that the applicant had taken any steps to rectify any claimed error in those records.

39. The Department's decision was made on 19 September 2016. Over the three years since that decision has been made, the only claim made by the applicant is that the information held by the Philippine authorities is a mistake. There is no information which would indicate that the applicant has taken any steps to rectify that claimed mistake or contact the authorities to enquire how the marriage certificate was issued if, as she claims, she was never married in the Philippines.
40. The applicant's agent argued that the applicant intended to seek a variation of her Bridging visa to enable her to return to the Philippines for a period of time to take action to rectify the alleged mistake in the records. The applicant has a number of relatives who continue to live in the Philippines who would be able to assist her in taking any steps to rectify any claimed mistake if she wished. There is nothing to indicate that the applicant would be prevented from instructing a lawyer in the Philippines while she remained in Australia to carry out any investigation or application for rectifying any claimed error in the issuing by the Philippine authorities of her marriage certificate. There is nothing to indicate the applicant has asked any relative or professional to take any steps to seek to rectify any claimed mistake by the authorities in the Philippines in recording her marriage to Virgillo Urbano Jr.
41. The Tribunal does not accept that it is appropriate that it delay any decision in this matter based on a claim that the applicant may seek a change in her Bridging visa conditions in Australia to be able to return to the Philippines temporarily to rectify any claimed mistake in the official records. There is no indication that she has taken any steps at this time to rectify any claimed error, there is no indication as to how long a postponement would be required or any details of the steps she would be taking to rectify any claimed mistake in the records. In those circumstances, the Tribunal has proceeded to a decision based on the information currently before it.
42. As stated above, the issue in this review is whether the visa applicant meets PIC 4020 as required by cl.820.226 for the grant of the visa. Relevant to the current application, this requires that there is no evidence that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal, a relevant assessing authority, or Medical Officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to the application for the visa or a visa that the applicant held in the 12 months before the application was made: PIC 4020(1).
43. The requirements in PIC 4020(1) can be waived if there are certain compelling or compassionate reasons justifying the granting of the visa: PIC 4020(4). PIC 4020 is extracted in the attachment to this decision.

Has the applicant given, or caused to be given a bogus document, or information that is false or misleading in material particular?

44. The term 'information that is false or misleading in a material particular' is defined in PIC 4020(5) and the term 'bogus document' is defined in s.5(1) of the Act (see the attachment to this decision). In contrast to the definition of 'information that is false or misleading in a material particular' in PIC 4020(5), the reference in the definition of bogus document to a document that was obtained because of a 'false or misleading' statement has no requirement that it be relevant to a criterion for the grant of the visa: *Arora v MIBP* [2016] FCAFC 35; *Batra v MIAC* [2013] FCA 274.
45. The requirement in PIC 4020(1) not to provide a bogus document, or false or misleading information, applies whether or not the Minister became aware of the bogus document or information that is false or misleading in a material particular because of information given by the applicant: PIC 4020(3). It also applies whether or not the document or information was provided by the applicant knowingly or unwittingly.

46. While PIC 4020 refers to information that is false, in the sense of purposely untrue, it is not necessary for the Minister (or the Tribunal on review) to conclude that the applicant was aware the information was purposely untrue in order for PIC 4020 to be engaged. However, an element of fraud or deception by some person is necessary to attract the operation of the provision: *Trivedi v MIBP* [2014] FCAFC 42.
47. The applicant denies that she has provided information that is false or misleading or a bogus document in support of her application. She claims that the information obtained by the Department from the Office of the Civil Registrar General in the Philippines that she married Virgillo Urbano Jr. on 15 July 2005 was simply a mistake. The Tribunal does not accept this.
48. The applicant claimed that she could not identify Virgillo Urbano Jr. or anyone who knew of him. There is no reason why Virgillo Urbano Jr. or anyone else would have claimed to have married the applicant and recorded that marriage with the appropriate authorities in the Philippines.
49. The Certificate of Marriage provides details of the applicant, including her date and place of birth, and details of her parents. The Tribunal does not accept that this information would be able to be obtained by anybody who did not know the applicant and her personal situation.
50. The Certificate of Marriage is purportedly signed by the applicant. The applicant acknowledged the signature on the Certificate of Marriage is nearly identical to her signature as shown on the Residential Tenancy Agreement she signed on 10 October 2015. Apart from the applicant claiming that the record of her marriage is a mistake, there is nothing to indicate that the signature on that certificate is not the applicant's. The Tribunal finds that the signature on the Certificate of Marriage is that of the applicant.
51. The applicant provided documents in respect of the purchase of real property she made in 2012. These documents all describe her as being single. The Tribunal is not satisfied that these documents show that she did not marry Virgillo Urbano Jr. in 2005. The documents are based on information provided by the applicant and do not rely upon any independent investigation by any organisation or group involved in the sale or purchase of that property. At that time, the applicant was claiming to be in a relationship with the sponsor and it is not surprising, therefore, that she would declare in these documents that she was single, regardless of any previous marriage she was party to.
52. The Tribunal finds the applicant married Virgillo Urbano Jr. in the Philippines on 15 July 2005. There is no information which would indicate the applicant has divorced Virgillo Urbano Jr. or that the marriage has been annulled or terminated in any way. The Tribunal finds that at the time of the application the applicant was married to Virgillo Urbano Jr. and she failed to disclose this information in her application. This information is material to the application as it would affect the assessment made by a delegate when considering the genuineness of the applicant's relationship to her sponsor and whether she was the spouse of the sponsoring partner.
53. Further, the fact that the applicant remained married to Virgillo Urbano Jr. means the marriage certificate of the applicant to the sponsoring partner is a bogus document. The marriage certificate could not have been issued if the applicant remained, at the time of the marriage to her sponsor, married to Virgillo Urbano Jr. The marriage certificate states that at the time of the marriage the applicant's conjugal status was never validly married. As the Tribunal has concluded that the applicant married Virgillo Urbano Jr. on 15 July 2005 and remains married to him, the Australian marriage certificate was obtained by the applicant because of the false or misleading statement that she had never been validly married at the time that certificate was issued. Accordingly the Australian marriage certificate is a bogus document.

54. For the above reasons the Tribunal finds the applicant does not meet PIC 4020(1).

Should the requirements of PIC 4020(1) or (2) be waived?

55. The requirements of PIC 4020(1) and (2) may be waived where there are compelling circumstances that affect the interests of Australia, or where there are compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident, or an eligible New Zealand citizen (as defined in r.1.03 of the Regulations), that justify the granting of the visa. The decision-maker must first be satisfied that there are such circumstances, then must consider whether to exercise the discretion to waive the requirements, having regard to those circumstances: *Kaur v MIBP* [2017] FCAFC 184.
56. The expressions 'compelling circumstances' and 'compassionate or compelling circumstances' are not defined for these purposes. To be compelling, the circumstances must force or drive the decision-maker irresistibly to be satisfied: see *Plaintiff M64/2015 v MIBP* [2015] HCA 50. The ordinary meaning of 'compassionate' relates to feelings of sympathy, sorrow, pity or concern for others.
57. There is no information before the Tribunal that there are any compelling circumstances that affect the interests of Australia which would justify the granting of the visa.
58. The claim made by the applicant is that the effect on the sponsor, who is an Australian citizen, of the refusal of her application provides a compassionate or compelling circumstance that justifies the granting of the visa.
59. The parties claim to have been in a committed relationship with each other since May 2007. Until August 2015 the applicant remained living primarily in the Philippines and the sponsor was living in Australia. The sponsor travelled to the Philippines each year for about 20 days. The sponsor has extensive holidays owing to him (the applicant estimated 600 hours plus long service leave) and there is nothing to indicate that he would not be able to travel to spend time with the applicant in the Philippines if her visa was refused. This is the same situation that the parties faced over eight years of their claimed relationship.
60. The applicant owns property in the Philippines which is currently vacant. The sponsor stayed with the applicant in her property when he last travelled to the Philippines in 2013. There is nothing to indicate that he would not be able to stay with the applicant in her home in the Philippines if the applicant's visa were refused.
61. When the Department made their decision, the delegate took into account the fact that the parties claimed to be in a genuine relationship but there were no claims made that the sponsor was affected by significant health or welfare issues. Before the previously constituted Tribunal, a statement was provided by the sponsor claiming that it would be devastating emotionally for him if the visa was turned down to their marriage and would make their future very uncertain. There was no claim that the sponsor suffered any particular health issues. Before the current Tribunal, the sponsor claimed that if the applicant were required to leave Australia it would cause him to relapse into the deep depression that he suffered previously and would lead to self-destructive behaviour and suicidal thoughts.
62. The Tribunal accepts at face value the claims made by the parties that they have been in a genuine and continuing relationship since 2007. The Tribunal notes the parties were married on 10 January 2015, although the validity of that marriage is questionable due to the fact that the applicant remained married to Virgillo Urbano Jr. as a result of her marriage to him in 2005. The parties have been living together in Australia since August 2015.

63. The criteria in cl.820.211(2)(a) and cl.820.221 is that the applicant is and continues to be the spouse or de facto partner of the sponsoring partner. This, in part, requires the applicant and the sponsor to be in a genuine, continuing and exclusive relationship. If an applicant does not meet PIC 4020(1), when considering the compassionate or compelling circumstances that affect the interests of an Australian citizen which would justify the granting of the visa, it must be the particular aspects of the relationship and the effect on the sponsor which must provide compassionate or compelling circumstances to justify the granting of the visa and not simply the fact that the parties are in a relationship. The Tribunal has considered all the aspects of the relationship, including the fact that the parties claim to be in a relationship, the length of the claimed relationship, the nature and the extent of the bonds between the parties, and the consequences of any separation even if only for a limited time while an offshore application is being processed, if such an application is made, when considering if there are compassionate or compelling circumstances that affect the interests of an Australian citizen that justify the granting of the visa.
64. The sponsor has been working as a truck driver for at least 15 years. His income is about \$100,000 per annum. He has managed to support himself while living in Australia by himself and there is nothing to indicate that he is financially dependent upon the sponsor whose income is only about \$55,000 per annum.
65. The sponsor suffers from diabetes and sleep apnoea. This does not appear to have affected his capacity to work or maintain his lifestyle. He takes medication for his diabetes and does not appear to require any support or assistance from the applicant to manage this condition. As indicated above, the applicant has been working as a truck driver for at least 15 years. He has not been required to take any significant time off work for any medical or other reasons. He has accumulated significant holiday entitlements. His work takes him away from Sydney for significant periods. There is nothing to indicate that the sponsor is so dependent upon the applicant that any separation from her would cause him such distress as to provide compassionate and compelling circumstances to justify the granting of the visa.
66. It was claimed that the sponsor previously suffered from depression before meeting the applicant and any separation would lead to self-destructive behaviour and suicidal thoughts. No medical information has been provided by any health provider to support this claim. The claim was first made immediately prior to the hearing before the Tribunal. The information provided by the sponsor to the previously constituted Tribunal was that if the applicant's visa was turned down it would be devastating emotionally. No indication was made that the applicant had ever suffered from depression or any suicidal thoughts.
67. No information has been provided by a mental health practitioner that the sponsor is suffering from depression or any other mental health condition. The sponsor has received regular treatment for his diabetes and sleep apnoea. There is nothing to indicate that the medical professionals who have treated him in respect of those conditions believed that there was any necessity to refer the sponsor for counselling or any other reason due to any claimed dependency he has upon the applicant.
68. It was claimed that the sponsor's depression ended after meeting the applicant. For an eight year period over the claimed relationship the applicant was residing in the Philippines and the sponsor in Australia, with the sponsor travelling regularly to the Philippines to spend time with the applicant. There is nothing to indicate that if the applicant's visa was refused the parties would not be able to continue the relationship that they had from 2007 until 2015 when the applicant commenced residing in Australia.
69. The sponsor has never sought assistance for any mental health issues from a professional. The sponsor claimed that he has not done so because he just kept it to himself. If the sponsor did suffer depression as he claims to fear, there would be nothing to prevent him

from obtaining appropriate mental health care for any anxiety or depression that he might suffer from. On the evidence before the Tribunal, however, the Tribunal is not satisfied that any mental health issues the sponsor may claim to fear as a result of any separation from the applicant would provide a compassionate or compelling circumstance to justify the granting of the visa.

70. It is noted that the Department's decision to refuse the applicant the grant of the visa based on her failing to meet PIC 4020 was made on 19 September 2016. As such, more than three years has passed since the applicant was refused a visa because of a failure to satisfy PIC 4020(1). As such, if the applicant was required to return to the Philippines she would be in a position to be able to apply for a Partner visa and satisfy PIC 4020(2) in respect of that application.
71. The Tribunal has considered all the circumstances of the parties and in particular the effect on the sponsor and whether there are compassionate or compelling circumstances that affect the sponsor that would justify the granting of the visa both individually and cumulatively. The Tribunal is not satisfied that the circumstances of the sponsor and how any separation from the applicant would affect him provides a compassionate or compelling circumstance that justifies the granting of the visa.
72. There is limited information of any circumstances affecting any other Australian citizen, permanent resident or eligible New Zealand citizen that would justify the granting of the visa. The applicant is employed in Australia, however, there is nothing to indicate that her role in her employment is so vital that she would not be able to be replaced. The applicant has friends in Australia, however, there is no information that they are dependent upon her for any reason. The only relatives she has in Australia are her sister and niece. They are present in Australia on temporary Student visas.
73. For the above reasons, the Tribunal is not satisfied that the requirements of PIC 4020(1) should be waived.
74. On the basis of the above, the applicant does not satisfy PIC 4020 for the purposes of cl.820.226.

DECISION

75. The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Hugh Sanderson
Member

ATTACHMENT

Migration Regulations 1994

Schedule 4

- 4020 (1) There is no evidence before the Minister that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal during the review of a Part 5 reviewable decision, a relevant assessing authority or a Medical Officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to:
- (a) the application for the visa; or
 - (b) a visa that the applicant held in the period of 12 months before the application was made.
- (2) The Minister is satisfied that during the period:
- (a) starting 3 years before the application was made; and
 - (b) ending when the Minister makes a decision to grant or refuse to grant the visa;
- the applicant and each member of the family unit of the applicant has not been refused a visa because of a failure to satisfy the criteria in subclause (1).
- (2AA) However, subclause (2) does not apply to the applicant if, at the time the application for the refused visa was made, the applicant was under 18.
- (2A) The applicant satisfies the Minister as to the applicant's identity.
- (2B) The Minister is satisfied that during the period:
- (a) starting 10 years before the application was made; and
 - (b) ending when the Minister makes a decision to grant or refuse to grant the visa;
- neither the applicant, nor any member of the family unit of the applicant, has been refused a visa because of a failure to satisfy the criteria in subclause (2A).
- (2BA) However, subclause (2B) does not apply to the applicant if, at the time the application for the refused visa was made, the applicant was under 18.
- (3) To avoid doubt, subclauses (1) and (2) apply whether or not the Minister became aware of the bogus document or information that is false or misleading in a material particular because of information given by the applicant.
- (4) The Minister may waive the requirements of any or all of paragraphs (1)(a) or (b) and subclause (2) if satisfied that:
- (a) compelling circumstances that affect the interests of Australia; or
 - (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen;
- justify the granting of the visa.
- (5) In this clause:
- information that is **false or misleading in a material particular** means information that is:
- (a) false or misleading at the time it is given; and
 - (b) relevant to any of the criteria the Minister may consider when making a decision on an application, whether or not the decision is made because of that information.

...

Migration Act 1958

s.5 Interpretation

(1) In this Act, unless contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly.

...